The Indiana Prosecutor

Published by the
Indiana Prosecuting Attorneys Council
March 2004

In this issue...

RECENT DECISIONS

SEATBELT STOP NO RIGHT TO ASK FOR CONSENT TO SEARCH

Clark v. State
804N.E.2d 196
(Ind. Ct. App 3/3/04)

James Clark was pulled over in Franklin when he was observed driving his vehicle while not wearing his seatbelt. Clark was able to produce his driver's license when asked to do so, but was unable to provide the registration for which the stopping officer asked. After issuing a warning, Franklin Police Officer Joe Dillon asked Clark if he had anything illegal in his vehicle. Clark responded that he did not. The officer then asked if he could take "a quick look in the car." Clark said that he had no objection but he was low on gasoline and needed to get to a nearby service station. Officer Dillon followed Clark to the station at which point Clark told the officer to go ahead and look in his vehicle. Officer Dillon found a plastic bag of marijuana in the glove box of Clark's car. Clark moved to suppress the marijuana. The trial court denied that motion and this interlocutory appeal followed.

In *Baldwin v. Regean,* the Indiana Supreme Court, in 1999, authorized law enforcement officers to stop vehicles without probable cause when the officers had reasonable suspicion that a seatbelt violation had occurred. I.C. 9-19-10-3 provides that "A vehicle may be stopped to determine compliance with this chapter [the seatbelt enforcement statute]. However, a vehicle, the contents of a vehicle, the driver of a vehicle or a passenger in a vehicle may not be inspected, searched, or detained solely because of a violation of this chapter." In the *State v. Morris* decision that followed in 2000, the Court of Appeals held that the stop of a vehicle based upon the failure of the driver or passenger to wear his/her seatbelt does not, standing alone, provide reasonable suspicion for the police to unilaterally expand their investigation and fish for evidence of other possible crimes. Only when circumstances arise after the initial seatbelt stop that create reasonable suspicion of other crimes, may further inspection, search or detention occur.

In Clark's case, the Franklin officer initiated the traffic stop of Clark's vehicle based solely upon the officer's reasonable suspicion that Clark was not wearing his seatbelt. There were no facts known to Officer Dillon that would have reasonably led him to believe that criminal activity had occurred or was about to occur when he asked Clark for consent to search his vehicle. The Court of Appeals held that after a seatbelt stop, without

independent, reasonable suspicion of another crime, an officer is prohibited from seeking consent to search the stopped vehicle. To do so is a violation of Article I Section 11 of the Indiana Constitution, the Court said. Case reversed and remanded.

* * * *

FROM THE U.S. SUPREME COURT
Crawford v. Washington
_____ U.S. _____
(3/8/04)

On March 8, 2004, the United States Supreme Court published *Crawford v. Washington,* an opinion characterized by *The New York Times* as "highly favorable" to criminal defendants. The Court's 9-0 decision held that when pre-trial hearsay statements of an unavailable witness are "testimonial", the 6th Amendment requires that the accused have had an opportunity to cross-examine the witness prior to the statements being admitted into evidence.

Crawford specifically overruled *Ohio v. Roberts,* a 1980 Supreme Court opinion, which held that a hearsay statement bearing adequate indicia of reliability would withstand a Confrontation Clause challenge. Under *Crawford v. Washington,* the prosecution may introduce the "testimonial" statement of an unavailable witness only if the witness has been previously cross-examined by the defense. The *Crawford* opinion did not, however, provide a comprehensive definition of "testimonial". Prosecutors are therefore left to determine just what a "testimonial" pre-trial statement is.

The Supreme Court did provide limited guidance as to hearsay statements that will be deemed "testimonial." A Webster's dictionary definition of testimony was cited in the opinion. Testimony according to that definition is a "solemn declaration or affirmation made for the purpose of establishing or proving some fact." The Supreme Court explained, based upon that definition, that "an accuser who makes a formal statement to government officers bears testimony in a sense that a person who makes a casual remark to an acquaintance does not."

An extra-judicial statement contained in formalized testimonial materials such as affidavits, depositions, and prior testimony or confessions is testimonial according to the *Crawford* opinion. Testimonial statements, according to the Court, include statements made under circumstances that would lead an objective witness to reasonably believe that the statement would be available for use at a later trial. The Supreme Court categorized statements taken by police in the course of interrogations as testimonial.

Although a watershed case, *Crawford* leaves many questions unanswered. Whether the opinion will bar statements presently admitted as firmly rooted hearsay exceptions is one of those yet unanswered questions. Victor Vieth, Director of the American Prosecutors Research Institute's National Center for the Prosecution of Child Abuse, opined that whether or not *Crawford* will apply in a given case depends upon the circumstances surrounding the statement given."

Prosecutors who face *Crawford* challenges are asked to forward copies of motions filed and responses drafted to the American Prosecutors Research Institute. APRI intends to serve as a central clearing house for prosecutors on *Crawford* related materials and their impact on domestic violence and child abuse prosecutions. Any such motions should be sent to April Davis by e-mail at april.davis@ndaa-apri.org or by mail at APRI, 99 Canal Center Plaza, Suite 510, Alexandria, VA, 22314.

Attorneys at APRI are also available to respond to prosecutor's questions, strategize or assist in legal research on *Crawford* questions. Prosecutors wishing to review a *Crawford* issue with an APRI attorney should call APRI at 703-549-9222.